

BOARD OF APPEALS CASE NO. 4638

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BEFORE THE

APPLICANT: Harbond Associates Ltd.
Partnership

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ZONING HEARING EXAMINER

REQUEST: Appeal of Administrative
Decision and modification of Board of
Appeals Case No. 1435; MD Route 24 at
Forest Valley Drive, Forest Hill

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/3/96 & 7/10/96

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Record: 7/5/96 & 7/12/96

HEARING DATE: August 21, 1996

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Harbond Associates Limited Partnership. The Applicant filed an appeal of an administrative decision dated April 30, 1996 or, in the alternative, the Applicant is requesting a modification of Board of Appeals Case No. 1435.

The subject property is located at MD Route 24 and Forest Valley Drive in the Third Election District. The parcel is identified as Parcel No. 107, in Grid 3-E, on Tax Map 40. The parcel contains 11.8 acres, more or less, all of which is zoned R3/B2.

Mr. William J. Fleischer appeared and testified that he is a partner in Harbond Associates Ltd. Partnership and that the subject property was purchased in 1982, which consists of 180 apartment units. Mr. Fleischer said the Applicant has made no changes in the operation of the project since it was purchased in 1982 and he explained that the entire site was zoned R3 at the time of the purchase. He went on to testify that during the last comprehensive rezoning, the Applicant filed a request to have a portion of the parcel rezoned from R3 to B2. Mr. Fleischer said that it was his understanding that the request was approved.

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The witness indicated that approximately 4 months ago, he discovered for the first time that the Department of Planning and Zoning ruled that the original zoning approved for the project prohibited the subject property from being used for any use other than an apartment complex, even though it was zoned B2. Mr. Fleischer said that he was advised that a B2 use could only be conducted on the subject property if the original zoning approval was modified and he testified that when he learned of the Department's decision, he contacted the attorney who handled the request under the comprehensive rezoning and was advised by the attorney that he did not recall any conditions whatsoever being imposed when the property was rezoned B2 in the comprehensive.

Mr. Fleischer testified that developing the subject property with B2 uses would not cause harm to anyone and he described the property as being rocky with steep slopes and far removed from the apartment buildings. He said the subject property has never been put to any use in connection with the apartments and has been vacant, unused land since the apartments were constructed. He said the subject property is not and cannot be used or enjoyed by the residents of the apartments given its site condition, topography and distance from the apartment buildings themselves. Mr. Fleischer testified that developing the subject property for a B2 use would not harm the residents of the project and he indicated that he has contacted the residents to determine if they would be opposed to development of the subject property with a B2 use. The witness said that he would not do anything on the subject property to impact the residents of the apartments because he still owns and operates the apartments. He, further, indicated that development of the subject property with a B2 use would not impact anyone else. He said the subject property is already zoned B2 and is virtually surrounded by property zoned commercial. Mr. Fleischer also said that the 4 conditions of approval recommended in the Department's Staff Report were acceptable.

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Mr. Morris Wolf appeared and testified that he was a principal of the Harford Estates, which was the entity which originally developed the Harford Village Apartments. Mr. Wolf said that he had personally been involved in obtaining the necessary zoning approval for the project and confirmed that the parcel was sold to the Applicant in 1982. Mr. Wolf said that during the time Harford Estates owned and operated the apartments, the subject property was always vacant and undeveloped and confirmed that it was never used for open space or any other purpose relating to the apartments. He testified that there is a grade difference which made it inappropriate for it to be used as part of the apartment project and said that the subject property is essentially a pile of rocks covered with dirt and trees. He indicated that the subject property was never intended to be put to any use related to the apartment project and, in fact, was always intended to be used for commercial purposes. He said that the subject property was included in Case No. 1435 by mistake, apparently because it was part of the 11.8 acre parcel of land where the apartment project was located. He said the Department of Planning and Zoning nor the Board of Appeals ever discussed the subject property during the apartment project approval process.

Mr. Denis Canavan appeared and qualified as an expert in the field of land planning. Mr. Canavan indicated that he was present during and able to hear the testimony of Mr. Fleischer and Mr. Wolf and indicated that he had reviewed the Staff Report, the zoning application, the Applicant's exhibits, and had personally visited the subject property. He said he was familiar with the subject property and the surrounding area.

Mr. Canavan explained that he reviewed the decision in Board of Appeals Case No. 1435 in which the apartment project was originally approved by the Board. He indicated that the decision did not impose any specific condition of approval on the subject property and said he was familiar with Section 267-56(B) and 267-9 of the Code. Mr. Canavan said that he agreed with the Applicant that the Board could modify the original approval if necessary, provided the standards set forth in Section 267-9 were met by the Applicant.

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Mr. Canavan stated that, in his opinion, modification of the approved site plan in Case No. 1435 would not adversely affect the public health, safety and general welfare and would not result in dangerous traffic conditions and would not jeopardize the lives or property of people living in the community. He pointed out that the County Council had already decided that the subject property was appropriate for B2 use when it rezoned the subject property to that classification 8 years ago. He said there is no suggestion from anyone that the B2 zoning classification for the subject property is inappropriate. On the contrary, he said all of the evidence indicates that the subject property should be zoned B2. He said the classification is consistent with the Master Land Use Plan and compatible with other properties also zoned commercial.

Mr. Canavan said that it was highly unusual to rezone property with conditions of any kind during the comprehensive zoning process. He said he could not understand why the County Council would rezone the subject property B2, which permits commercial use, and at the same time prohibit its use for commercial purposes without modifying the Board of Appeals case which approved the project. He testified that the subject property could be used for B2 use without modification of Board of Appeals Case No. 1435. He said that, based on the evidence, the subject property was unusable for anything related to the apartment project. He said the residents have not, do not and could not use the subject property for any purpose and do not object to the property's development with B2 use.

No protestants appeared in opposition to the Applicant's request and the Staff Report recommends conditional approval of the request to modify Board of Appeals Case No. 1435.

CONCLUSION:

The Applicant, pursuant to Section 267-7(E) of the Harford County Code requested an appeal of an administrative decision in a letter dated April 30, 1996, signed by Arden Holdredge, Director of the Department of Planning and Zoning. In the alternative, the Applicant has requested a modification of Board of Appeals Case No. 1435, pursuant to Section 267-56(B).

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Section 267-56 (B) provides:

"Any modification not in accordance with the terms of this article shall require the approval of the Board of Appeals, pursuant to Section 267-9 of this Part I."

Section 267-9 establishes the Board of Appeals, the powers and duties of the Board, authorizes the use of hearing examiners and generally outlines procedural matters. Section 267-9(I), however, sets forth "Limitations, Guides and Standards" which must be considered in order to modify Board of Appeals Case No. 1435.

A review of the documents contained in the file of Board of Appeals Case No. 1435 indicate that the subject parcel was comprised of 11.8 acres and, further, that the entire parcel was shown on the plat which was approved by the Board of Appeals, which plat was also recorded among the Plat Records of Harford County.

Therefore, it is the finding of the Hearing Examiner that the interpretation of the Director of the Department of Planning and Zoning in the letter dated April 30, 1996 is correct.

In the alternative, the Applicant is asking for a modification of Board of Appeals Case No. 1435 to allow a portion of the subject parcel be rezoned from R3 to B2 in the 1989 rezoning to be used in a manner consistent with its current B2 classification. Further, for the modification to be approved pursuant to Section 267-56(B), the Applicant is required to establish that the approval meets the "Limitations, Guides and Standards" set forth in Section 267-9.

The uncontradicted evidence introduced by the Applicant's witnesses indicate that the subject property has been zoned B2 since 1988. There is no evidence that conducting a use permitted in the B2 zone on the subject property would have adverse impact on anyone, that the zoning of the subject property is consistent with the Land Use Plan and that development of the subject property with a use permitted in the B2 zone would be appropriate.

The Staff Report and the testimony of the Applicant's expert witness, Denis Canavan, confirms that all Code requirements set forth in Section 267-9(I) have been met.

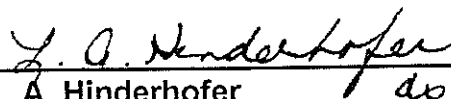
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The evidence also shows that allowing the subject property to be used for a permitted B2 use would have no adverse impact on the residents of the apartment complex. None of the residents in the complex nor, as a matter of fact, no protestants appeared in opposition to the request and the Applicant did submit, as Petitioner's Exhibit No. 6, a number of signed petitions indicating that the residents were not opposed to the use of the property for a B2 purpose. The County Council, by rezoning the property from R3 to B2 during the 1988 Comprehensive Rezoning deemed the property suitable for commercial use.

It is the finding of the Hearing Examiner that the Applicant has met the burden, pursuant to Section 267-567(B) and Section 267-9(I), which would justify the approval of the modification. Therefore, it is the recommendation of the Hearing Examiner that the modification be approved, subject to the following conditions:

1. The Applicant shall rerecord the commercial portion of the property as a separate parcel or lot. A preliminary plan shall be submitted to the Department of Planning and Zoning for review and approval and a final plat shall be recorded among the Plat Records of Harford County.
2. When the Applicant establishes a specific use for the property, a detailed site plan shall be submitted to the Development Advisory Committee for review.
3. A screening plan shall be submitted to the Department of Planning and Zoning for the west side of the property, being that portion of the property adjacent to the apartment complex.
4. Any future lighting shall be designed and directed on site.

Date SEPTEMBER 24, 1996



L. A. Hinderhofer do
Zoning Hearing Examiner